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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,926	12/16/2005	Lone Andersen	0114229/0556831	6586
26874 7590 12/05/2008 FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202				
EXAMINER CORBIN, ARTHUR L				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/05/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

Office Action Summary

Application No.

10/528,926

Applicant(s)

ANDERSEN ET AL.

Examiner

Arthur L. Corbin

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04-02-08, 08-07-08, 09-26-08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 10-13 and 15-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10-13 and 15-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date 040208, 092608
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8, 10-22, 26-29, 32-36, 38, 39, 41, 42, 46-51, 53-56, 61 and 63 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Goldberg et al (WO 01/47368, pages 4-7, 9-14, 19) as set forth in paragraph no. 6, Paper No. 20080213.

4. Claims 23-25, 30, 31, 37, 40, 43, 52 and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al as set forth in paragraph no. 7, Paper No. 20080213.

5. Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al in view of Li et al (6,153,231, col. 7, lines 60-61) as set forth in paragraph no. 8, Paper No. 20080213.

6. Claims 57-60 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al in view of Meyers (5,433,960, cols. 3, 9-13 and claims 1, 16, 27) as set forth in paragraph no. 9, Paper No. 20080213.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-6, 8, 10-13 and 15-66 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as set forth in paragraph no. 17, Paper No. 20080213. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Applicant's arguments filed August 7, 2008 have been fully considered but they are not persuasive. Applicant's remark that there is no gum in Goldberg et al having at least two different biodegradable polymers is untenable. Goldberg et al clearly discloses the use of first and second biodegradable polymers in the gum base (pages 10-14). Additionally, and in direct contrast to applicant's contention regarding glass transition temperatures, it is readily apparent from Goldberg et al (page 19) that the use of two different biodegradable polymers having different glass transition temperatures in a gum base, as claimed by applicant (claim 1), is old.

10. Applicant's remark regarding lack of motivation for combining Goldberg et al and Li et al is clearly without merit. If the skilled artisan wanted to provide a chewing gum with medicinal benefits for the consumer, the skilled artisan would readily look to Li et al, which discloses such a chewing gum. Thus, it would have been obvious to include the pharmaceutical active agent used in Li et al in any chewing gum formulation to provide the consumer, who may have difficulty swallowing tablets or pills, with a means to ingest a solid medicinal product. Lastly, applicant's comment with regard to a coated chewing gum (page 17 of remarks) is ill founded, as Goldberg et al certainly provides such a disclosure. The fact that Goldberg et al "might" coat the gum therein, as applicant argues, is sufficient to render obvious the concept of coating any chewing gum, including that of Goldberg et al, for its intended purpose.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arthur L Corbin
Primary Examiner
Art Unit 1794

12. /Arthur L Corbin/
13. Primary Examiner, Art Unit 1794